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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1374

JOHN E. RING,

Petitioner,

v.

JUNE STRELECKI, Director of Motor Vehicles, and STATE OF NEW JERSEY,

Respondents.

BRIEF FOR RESPONDENTS, JUNE STRELECKI, DIRECTOR OF MOTOR VEHICLES AND STATE OF NEW JERSEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Appellate Division of the Superior Court of the State of New Jersey is unreported and is printed in Petitioner's appendix 17-24 (hereinafter cited as "P-a"). A petition for certification to the Supreme Court of New Jersey was filed and was denied by order of that court on May 2, 1967. No petition for rehearing to the New Jersey Supreme Court was made by the Petitioner.

Jurisdiction

Recent action by the Director of the Division of Motor Vehicles rends the within petition moot. In essence, Petitioner is contesting the suspension of his driving privileges by the Division of Motor Vehicles for having been a "persistent violator" under the "Point System Regulations" governing New Jersey licensed drivers. Under these regulations, a licensee who has accumulated twelve or more points, within a three year period of time, shall have his driving privileges summarily suspended for three months when a subsequent violation occurs within six months after restoration or official warning or warning after successfully completing a driver improvement course. Prior to an amendment to these regulations, the violation which was the triggering mechanism for this automatic suspension where the license has been conditionally restored to the licensee could occur in sister states as well as in New Jersey. The amendment to the regulation deletes a violation occurring in a sister state from consideration.

The violation which caused the Petitioner herein to be considered a "persistent violator" occurred in New York. Because of this express change in policy by the Division of Motor Vehicles, *i.e.*, eliminating out of state motor vehicle violations from the "persistent violator" regulations, it was felt that to continue Petitioner's suspension of his driving privileges would be contrary to the Division's policy and no useful purpose would be served thereby. To this end, the Director of the Division of Motor Vehicles has amended her order of suspension limiting it to the time during which the Petitioner has been without his driving privileges (approximately seven weeks) for the violation *sub judice*. As a result of this action, it is submitted that this petition is mooted for all practical purposes since the Petitioner presently has and will continue to have his driving privileges in New Jersey. (See Respondent's Appendix R1a, R2a)

A further objection to this Court's exercise of jurisdiction must also be noted. Petitioner has not timely raised the spectre of constitutional issues which he now requests this Court to review. Except for the double jeopardy issue, the other constitutional questions were not submitted to the appellate tribunal in New Jersey. They were raised for the first time in the petition for certification addressed to the New Jersey Supreme Court, which petition was denied by that court. The failure to raise constitutional issues in a timely fashion has always been a basis for this Court to deny *certiorari* and it should be applicable herein.

Questions Presented

1. Whether a Petition for a Writ of Certiorari should be granted where constitutional questions are not timely raised in the State court proceedings.

2. Whether a Petition for a Writ of Certiorari should be granted where the Petitioner has been administratively afforded the same relief which he now seeks from this Court.

3. Whether the action of the Division of Motor Vehicles, which afforded Petitioner a hearing following a suspension of his driving privileges for three months as a persistent violator where his driver's license had been conditionally restored to him, contravenes the unreasonable seizure, double jeopardy, unusual punishment, due process and equal protection provisions provided in the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

Constitutional Provisions, Statute and Regulations Involved

This case purportedly involves the unreasonable seizure, double jeopardy, unusual punishment, due process and

equal protection provisions as contained in the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

The New Jersey statutory provision, N.J.S.A. 39:5-30, which is involved herein, states in pertinent part:

> "Every registration certificate and every license certificate to drive motor vehicles may be suspended or revoked, and any person may be prohibited from obtaining a driver's license or a registration certificate, and the reciprocity privilege of any nonresident may be suspended or revoked by the commissioner for a violation of any of the provisions of this Title or on any other reasonable grounds, after due notice in writing of such proposed suspension, revocation or prohibition and the ground thereof."

The Point System Regulation of the New Jersey Division of Motor Vehicles, which is drawn in question here, provides:

> "Restoration after suspension or official warning, or warning after successfully completing a Division Driver Improvement School Course following accumulation of twelve or more points shall be with the express condition and understanding that conviction of any violation of the motor vehicle laws of New Jersey or other states within a period of one year thereof may result in summary suspension of driving privileges, without hearing, for the following periods:
>
> (a) When the violation occurred within six months of the date of action ..... three months;
>
> (b) When the violation occurred after six months but within nine months of the date of action ..... two months;

(c) When the violation occurred after nine months but within one year of the date of action ..... one month."*

Statement of the Case

This matter involves a Petition for a Writ of Certiorari to the Appellate Division of the New Jersey Superior Court by Petitioner, John E. Ring, from an affirmance by that court of the order of the Division of Motor Vehicles, suspending Petitioner's driver's license for a period of three months as a "persistent violator" by virtue of the authority of N.J.S.A. 39:5-30 and regulations adopted pursuant thereto. Petitioner's driving privileges were suspended for a period of three months as a persistent violator effective July 2, 1966, and subsequently on August 19, 1966, the suspension was stayed pursuant to an order of the Superior Court, Appellate Division, upon application of the Petitioner pending disposition of the appeal before that court. Of the period of suspension initially imposed upon the appellant, 42 days was not served. The remainder of the suspension period has been eliminated by the Director of the Division of Motor Vehicle and Petitioner's driving privi-

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* As indicated *infra*, this section of the "persistent violator" regulation was amended effective July 12, 1966 to delete violations occurring in other states from consideration. This portion of the regulation now reads in pertinent part, as follows:

> "Restoration after suspension or official warning, or warning after successfully completing a Division Driver Improvement Course following accumulation of twelve or more points shall be with the express condition and understanding that any violation of the motor vehicle laws of New Jersey committed within a period of one year thereof may result in summary suspension of driving privileges, without hearing, for the following periods . . . ."

leges have been fully reinstated. (See argument under *Jurisdiction* point and Respondent's Appendix).

Petitioner claims that there had been three prior equally illegal summary suspensions imposed by the Division of Motor Vehicles as a result of traffic violations (Pb6). Petitioner's assertion of illegality is distorting and should be clarified for the benefit of this Court. To that end, an illumination of the interrelationship between the Point System regulation and persistent violator subsection must be presented.

The history of Petitioner's motor vehicle violations and accidents prior to the September 28, 1964 suspension were not included in the record on the appeal. However, prior to the suspension in September 1964, the Petitioner had accumulated sufficient points (at least twelve) to bring the persistent violator's provision into play. Thus, the suspensions, from September 1964 to June 1966, were all triggered by a subsequent violation after a period of suspension had been served by Petitioner because of an accumulation of traffic points. After each period of suspension, the driver's license was conditionally restored to the Petitioner. Each notice of restoration had the following condition on it:

> "This restoration is with the distinct understanding that if you are again convicted for a violation, your driver license privilege will be suspended forthwith."

In September 1964, Petitioner's driving privileges were suspended as a result of a May 25, 1964 moving violation (P21a). Subsequently, the period of suspension was extended another month because of a September 3, 1964 speeding conviction wherein Petitioner was guilty of speeding

64 miles an hour in a 50 mile per hour zone in violation of N.J.S.A. 39:4-98(c) (P21a). During this period of suspension, on October 7, 1964, Petitioner was issued a summons for driving while on the revoked list in violation of N.J.S.A. 39:3-40 (P21a). This period of suspension was extended an additional six months for this violation (P21a). On July 30, 1965, Petitioner's driver's license was restored to him (P21a to P22a). The notice of restoration contained the same condition which obtained upon the return of his license as on prior occasions (P22a).

On October 25, 1965, Petitioner was convicted in a New York Court for a violation of the New York Traffic Code for failure to keep to the right (P22a). His driver's license was suspended on July 2, 1966 as a persistent violator in accordance with the regulation and warning on his notice of restoration. Because of a change in policy resulting in the elimination of out of state violations for purposes of triggering the persistent violator regulation, the Director of the Division of Motor Vehicles has deemed it appropriate to amend her order of suspension to permit the period heretofore served as satisfying the suspension. Thus, the matter at bar has been mooted for all intents and purposes.

Nevertheless, it is quite evident from the foregoing that Petitioner was not unfamiliar with the various rules and regulations of the Division of Motor Vehicles. In addition, he has had several conditional restorations of his license prior to the incident of which he complains. It is in this context that Petitioner is claiming that his constitutional rights have been abridged by a summary suspension of his driving privileges.

Argument

As permitted by the rules of this Court, argument relating to the jurisdiction of this Court is embraced under the jurisdictional point in this brief. In this regard, it is submitted that there are substantial reasons why this Court should deny the within Petition for Writ of Certiorari. First, no relief to the Petitioner can be provided by this Court which has not already been afforded by the Director of the Division of Motor Vehicles. In effect, the amended order of suspension, reducing the period to the time already served, moots the case (R1a, R2a). Second, all of the constitutional issues were not timely presented in the State court proceedings. In this connection, it is interesting to note that the Petitioner, in his petition for certification in the New Jersey Supreme Court, included a mandatory statement pursuant to New Jersey Rules of Court, R.R. 1:7-1(c), which is required when the questions involved include those which were not presented to the court below (Compare Pb7).

Although Respondent contends that the jurisdictional basis for this Court to grant *certiorari* is absent in this case, it should not thereby be inferred that the Respondent considers the Petitioner to have been unconstitutionally treated. On the contrary, it is strongly maintained that the regulation of the Division of Motor Vehicles which permits a summary suspension of driving privileges is constitutional in all respects.

As the Appellate Division of the Superior Court indicated, the Point System is a serious and intelligent and constructive attempt to promote traffic safety in this State. P22a; see also *District of Columbia* v. *Jones*, 183 A. 2d 391 (D. C. Mun. Ct. 1962). By employing the process of court proceedings to find a man guilty or innocent, the licensee

has every appropriate constitutional safeguard, and the subsequent administrative invocation of a suspension based on a history of traffic violation convictions is a reasonable way to promote traffic safety on the roads of the State. The suspension, of course, presumes that the license shall be restored after the period of suspension, and this is distinguishable from the more serious permanent revocation. *Compare generally Bechler* v. *Parsekian,* 36 N. J. 242 (1961), *with Kantor* v. *Parsekian;* 72 N. J. Super. 588 (App. Div. 1962). See also, *Tichenor* v. *McGee,* 4 N. J. Super. 467 (App. Div. 1949). The suspension only comes about after the licensee has shown himself to be a poor driver and a menace to the other drivers and pedestrians of the State. The suspension is also designed to aid the licensee by encouraging him to avail himself of an opportunity during the period of suspension to participate in a driver improvement program.

In the case *sub judice,* the Petitioner had had much experience with the ways of the Division of Motor Vehicles and had previously been advised on several occasions that his license was conditionally restored, as well as being once again notified of his conditional restoration on July 30, 1965. Petitioner violated the known terms of his conditional restoration by his New York motor vehicle violation, and on July 2, 1966 his conditional restoration was terminated and his driving privileges were suspended. [Contrast the knowledge of the Petitioner herein with that of the natural father who had no inkling of the adoption proceedings in *Armstrong* v. *Manzo,* 380 U. S. 545 (1965), the case principally relied upon by this Petitioner (Pb9; Pb11).] In addition, there was a hearing held by the Division after the final suspension, at which hearing the three-month suspension was upheld. Reviewing the record, it is difficult to see how Petitioner in fact was denied due process.

The charge that the Petitioner has been placed in double jeopardy has already been disposed of by the New Jersey courts.

In *Atkinson* v. *Parsekian*, 37 N. J. 143, 155 (1962), the New Jersey Supreme Court held that an administrative revocation of a driver's license is not punitive in purpose and hence does not involve double jeopardy. "The primary object of [N.J.S.A. 39:5-30] is to foster safety on the highway and not to impose criminal punishment to vindicate public justice." *Id.* at p. 155. See also, *Cresse* v. *Parsekian*, 81 N. J. Super. 536 (App. Div. 1963).

Petitioner's further contention that his license has been unreasonably seized in violation of the Fourth Amendment is substantially the same as his arguments based on due process of the Fifth and Fourteenth Amendments. The Division of Motor Vehicles had good cause and reasonable grounds to suspend Petitioner's driving privileges. Petitioner, although his license was conditionally restored to him, defaulted on the basic condition by being involved in another violation. To suspend summarily his license privileges where he has already had a second chance is no affront to our notions of due process of law and does not constitute an unreasonable seizure of his privilege to drive.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Respondents.

ALAN B. HANDLER,
First Assistant Attorney General,
Of Counsel.

ALAN D. KIRBY,
Deputy Attorney General,
RICHARD NEWMAN,
Deputy Attorney General,
On the Brief.

[APPENDIX FOLLOWS]

APPENDIX

State of New Jersey
Department of Law and Public Safety
Division of Motor Vehicles
Driver Control Service
25 So. Montgomery St.
Trenton, N. J. 08625

June 6, 1967

To: John E. Ring
97 Ridge Road
Rutherford, New Jersey

Date of Birth: 8-42 Eye Code: 4 Sex: M Effective Date of Suspension: 7-2-66 Susp. Code: P Reason: 733 Date of Restoration: 8-19-66 Rest. Code: Y Always Refer to Your Case File and Driver License No.: R4486 40765 08424 Expiration Date: 9-66

Notice of Restoration of New Jersey Driving Privileges

New Jersey Resident

X This restoration covers your New Jersey automobile, motorcycle and all other driving privileges.

Non-Resident

This restoration covers your reciprocity driving privileges in New Jersey.

Reason for Suspension:

Persistent Violator—You have again been convicted after restoration with distinct understanding.

Notice of Restoration of New Jersey Driving Privileges

Subsequent conviction in the New York Court as a result of a failure to keep right violation on October 25, 1965.

Period of Suspension: Effective July 2, 1966 and 3 Months from the date your driver license is received at this office.

Your driving privilege in New Jersey is restored subject to the following conditions: This restoration is with the distinct understanding that if you are again convicted for a violation, your driver license privilege will be revoked forthwith. Your driver license privilege was restored in accordance with court order (Appellate Division Docket No. A1191-65 dated August 19, 1966) pending appeal. At that time forty-eight (48) days of the three (3) month suspension period which had been imposed under the Persistent Violator Regulation was served.

This restoration applies only to the action covered by this notice and has no effect on any other suspension or pending action. By direction of the Director the three (3) month period of suspension is reduced to that period forty-eight (48) days already served.

JUNE STRELECKI
Director